

**UNITED STATE OF AMERICA
BEFOR THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

GOLDEN STATE FOODS

Employer

And

Case 10-RC-267373

BAKERY, CONFECTIONARY, TOBACCO
WORKERS AND GRAIN MILLERS UNION
LOCAL 42

Petitioner

**GOLDEN STATE FOODS' REQUEST FOR
IMMEDIATE STAY OF MAIL BALLOT ELECTION**

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[tracker.html?action=click&module=Top%20Stories&pgtype=Homepage](https://www.nytimes.com/interactive/2020/09/14/upshot/is-the-mail-getting-slower-tracker.html?action=click&module=Top%20Stories&pgtype=Homepage)

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**GOLDEN STATE FOODS' REQUEST FOR
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NOW COMES Golden State Foods (“GSF” or “Employer”) and, pursuant to Section 102.67 of the National Labor Relations Board’s Rules and Regulations, files this Request for Immediate Stay of Mail Ballot Election (“Request for Stay”)¹ as directed by the Acting Regional Director for Region 10. GSF requests the National Labor Relations Board (the “Board”) stay distribution of mail ballots and direct Region 10 to conduct a manual ballot election at the Employer’s Opelika, Alabama facility, consistent with the COVID-19 protocols set forth in the General Counsel’s 20-10 Memorandum.²

The following extraordinary circumstances compel the Board to grant this Request for Stay to immediately stay the distribution of mail ballots scheduled to commence on December 14, 2020, pursuant to the Acting Regional Director’s November 25, 2020 Decision and Direction of Election (the “Decision”):

¹ GSF will also be filing a Request for Review but wanted to position this Stay request before the Board for the purposes of expediency.

² On July 6, 2020, General Counsel Peter B. Robb issued GC Memorandum 20-10 containing suggested manual election protocols and reiterating that “the Board has ultimate authority to make decisions on when, how and in what matter elections are conducted” See General Counsel Memorandum 20-10, *Suggested Manual Election Protocols*, at 1 (July 6, 2020).

- The Decision presents a substantial question of law or policy because it requires further interpretation of the Board's recent decision *Aspirus Keweenaw*, 370 NLRB No 45 (November 9, 2020) and precedent established by *San Diego Gas & Electric*, 325 NLRB 1143 (1998).
- A substantial question of law or policy is raised because the record evidence in this case does not support the Acting Regional Director's decision to order a mail ballot election based solely on the most recent positivity rates being very narrowly above 5% in Lee County Alabama, based upon the Board's preference for manual elections, the Petitioner's willingness to participate in a manual ballot election, and the specific safety protocols in place at the plant to protect those involved in the election.
- The Acting Regional Director's abuse of discretion cannot be remedied in a post-election proceeding as the election will already have been completed.

As more fully set forth below, the Board should overturn the Acting Regional Director's Decision to mandate a mail ballot election when: (1) a manual ballot election can be safely conducted at GSF's Opelika facility by following the Board's COVID-19 election protocols; (2) there is no evidence that any person has been infected with COVID-19 at the facility; (3) GSF demonstrates that the COVID-19 risk has been minimized at the specific plant when, as here, the employees in the appropriate voting unit report to work at the facility every day, and the Employer has already instituted or will institute all reasonable safety protocols, including, but not limited to, those set forth in GC Memorandum 20-10; and (4) the United States Government through its Department of Agriculture have by virtue of its agents' daily presence at the plant essentially certified it as a safe working environment.³

³ It is worth pointing out that vaccines are on the immediate horizon and essential workers, like those in the petitioned for bargaining unit would be among the first to receive them. This too lends support to having an in-person vote.

I. STATEMENT OF THE CASE

On October 8, 2020, the Bakery, Confectionary, Tobacco Workers and Grain Millers Union Local 42 (“Petitioner”) filed a representation petition seeking certification as the collective bargaining representative of one hundred sixty-five (165) employees at GSF’s Opelika, Alabama protein plant. The parties do not dispute the appropriateness of the Petition and were prepared to stipulate to an in-person election, but the Acting Regional Director ordered an evidentiary Pre-Election Hearing, conducted on October 23, 2020 for the sole purpose of determining the propriety of an in-person election.

Again, the Petitioner having already agreed to an in-person election remained committed to that position at the hearing. Indeed, Petitioner even agreed that it would waive the time period to receive the voter eligibility list should the Decision and Direction issue with a short time frame for the vote. Tr. at 89. Thus, throughout this process, both parties have agreed that the Region could order and safely oversee a manual ballot election.

In her decision the Acting Regional Director conceded that all but one of the factors established by the Board in *Aspirus Keweenaw* pointed strongly in favor of an in-person election. Nevertheless, the Acting Regional Director ordered the mail ballot election based solely on the positivity rate in Lee County, Alabama, where the plant is located narrowly exceeding a 5% positivity rate. The Decision offers little explanation specific to GSF’s plant where a full complement of employees is and have been working daily during the pandemic, and there is no evidence of on-site transmission to anyone. Further, the Decision fails to address how the additional safeguards offered by GSF and outlined by the Board’s General Counsel do not sufficiently ensure the safety of all involved in this election. It likewise ignores the explicit validation of its safe working environment by the USDA.

Although the Board allowed mail ballot elections over the first few months of the pandemic, effective mitigation efforts at essential workplaces like GSF's Opelika plant have greatly diminished Covid-19 risks evidenced by zero positives among its employees for nearly a month before the Acting Regional Director's decision. See Brief in Response to Show Cause Order, Exhibit "B." It is a known and manageable part of daily life for GSF and its employees who report to work every day to perform essential work. Further, the spread of the pandemic has effectively evaporated as the workforce has adapted to stalwart mitigation efforts. Indeed, the General Counsel recognized these circumstances by issuing guidelines to conduct manual elections safely in the wake of COVID-19. GC Memorandum 20-10. Moreover, the Board's recent decisions in *Perdue Foods LLC*, 370 NLRB No. 20 (Sept. 9, 2020); and *Airgas USA, LLC*, 16-RC-262896 (Sept. 24, 2020) illustrate the Board's recognition that it is an abuse of discretion for an Acting Regional Director to order a mail ballot election based on the mere existence of the pandemic. For eligible voters, all of whom report to the Opelika plant every day, a manual election poses no additional risk.

II. BACKGROUND

Golden State Foods is one of the largest diversified suppliers to the foodservice industry, servicing approximately 125,000+ restaurants in more than 40 countries from its 50+ locations on five continents. Established in 1947, GSF is values-based with proven performance in superior quality, innovation, and customer service. GSF's Opelika, Alabama plant is the part of its protein products division. At the time of hearing, the Opelika plant employs approximately 199 employees in the petitioned for bargaining unit.

The Opelika plant has operated at normal capacity during the pandemic. GSF as food products producer has been designated as a sector of essential critical infrastructure workers by the United States Department of Homeland Security, Cybersecurity & Infrastructure Security Agency.

See U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency, *Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response, Version 4.0* (Aug. 18, 2020). As an essential business, GSF has maintained full operations for the duration of the pandemic while complying with all government guidelines related to reducing the spread of the coronavirus including, but not limited to, those specific to face coverings, social distancing, and increased sanitation. All employees report to work daily for their scheduled shifts.

Notably, the Opelika plant functions in accordance with all guidelines of the Centers for Disease Control (“CDC”). All the following precautions (and others) are in place at the plant:

- Daily employee temperature checks;
- Daily employee exposure and contact screening questions;
- Third-party regular and extensive facility cleaning;
- Employee cleaning protocols for equipment use; and
- Mandatory mask or face covering requirements.

There are no active work-related COVID-19 exposures at the Opelika facility, nor have there been for the last month.

III. THE ACTING REGIONAL DIRECTOR’S FINDINGS

The Acting Regional Director based her Decision to hold a mail ballot election solely on the positivity rate between November 1-15 in Lee County, Alabama which just barely exceeded 5%. The Acting Regional Director came to her conclusion even though an election would follow the same safety protocols already in place at the Opelika facility and more. This means the existence of an election does not increase potential transmission rates at all because these interactions exist with or without the voters being able to participate in a manual ballot election that maximizes voter participation. Further, the Acting Regional Director improperly

dismissed without due consideration the extensive precautions GSF volunteered to implement and build upon the protocols identified by GC Memorandum 20-10 and consistent with the remaining factors the Board detailed in *Aspirus Keweenaw*. These additional measures include conducting the voting process in either an outdoor tent, measuring 40 feet by 20, or in a large indoor conference room if weather made it difficult to hold the election outside. In both voting venues, present parties will be socially distanced more than six feet from one another, and plexiglass would be installed around the voting area, the observers and the Board agent. See Tr and Hearing Exhibit 1. Such additional safety precautions mitigate against the risk presented by COVID-19 and ensure that manual ballot voting can be completed in an environment as safe as any the Board can contemplate.

The Acting Regional Director's Decision runs roughshod over the Act's charge, and the Board's statutory duty, to protect employee choice. The Acting Regional Director does this by elevating one factor over record facts that Golden State has existing measures in place and other measures are proposed (fully consistent with the GC Memorandum 20-10) to safely conduct a manual ballot election at the Opelika facility – also stipulated by the Petitioner. Indeed, if the Acting Regional Director sought to protect employee free choice, a manual election would occur because a manual election improves participation rates and would not increase employee interaction or proximity or exacerbate COVID-19 concerns. It also ignores or otherwise minimizes the significance of the daily presence of USDA agents who by mere virtue of their presence provide proof of GSF's safety standards and commitment.

IV. APPLICABLE LEGAL STANDARDS AND ANALYSIS

The Acting Regional Director erred by overapplying one of the *Aspirus Keweenaw* standards which had the result of diminishing the others. This narrow reading of the Board's Covid-19 framework is nothing more than an unintended consequence given the holding of *San Diego Gas & Electric* and the NLRB's *Casehandling Manual Part Two*:

Representation Proceedings (“Casehandling Manual”), Section 11301.2 (“Manual or Mail Ballot Election: Determination”). *San Diego Gas & Electric* establishes that Acting Regional Directors should consider mail ballots in three situations: (1) scattered voters, (2) scattered schedules, and (3) a strike or lockout. The Board left open the possibility that other extraordinary circumstances may be relevant to election-type decisions. *San Diego Gas & Elec.*, 325 NLRB at 1145, n.6.

Board precedent in representation cases rests upon the critical threshold consideration of which method of election best advances employee choice (voter turnout, ease of participation, etc.). Mail or mixed ballot voting only exists when necessary to “enhance the opportunity of all to vote.” *Casehandling Manual*, Section 11301.2. *San Diego Gas & Electric* stands for the same principle: “[e]xtraordinary circumstances” mandating a mail ballot election only occur when the Acting Regional Director “might reasonably conclude that [voters’] opportunity to participate in the election would be maximized by utilizing mail or mixed ballot election methods.” *Id.* at 1145. Specifically, a Regional Director must tie their exercise of discretion, even in cases of extraordinary circumstances, to the Board’s proper role in ensuring employee participation and free choice. *Id.* at 1145 n.10 (“A Regional Director should, and does, have discretion, utilizing the criteria we have outlined, to determine if a mail ballot election would be both more efficient and likely to enhance the opportunities for the maximum number of employees to vote.”).

Here, while the Acting Regional Director relied on one factor of the Board’s framework, she otherwise did not base her Decision to hold a mail ballot election on the necessary extraordinary circumstances to support departure from the standard manual ballot election process. Indeed, the Acting Regional Director failed to address the far higher likelihood that any mail ballot election will suppress employee free choice by resulting in low voter turnout compared to a manual ballot process. Also, the Acting Regional Director briefly acknowledged safety precautions GSF will

take to ensure a safe voting environment yet ignored them without cause to conclude that any manual ballot election places participants at unsubstantiated risk of contracting COVID-19. Further, the Acting Regional Director's mail ballot election eliminates the possibility for any manual ballot election to take place, which is a position in contravention of General Counsel guidance that sets forth protocols to conduct a safe election. These errors individually and collectively constitute an abuse of discretion that the Board must correct by ordering a manual ballot election.

A. Mail Ballot Elections Result in Reduced Voter Turnout

The Decision also fails to address the grave harm to employee free choice that an election causes by reducing the chances of full employee participation. An on-site election, as opposed to a mail ballot, creates greater percentage of employee participation than in mail ballot elections. The Office of the General Counsel observed in 2008 that over the course of 2006–2007, the participation rate in manual elections was 81.57%, as compared to approximately 65% in mail or mixed manual-mail ballot elections. *See* General Counsel Memorandum 08-05, *Report on the Midwinter Mtg of the ABA P&P Committee* (April 17, 2008). Recent data definitively and empirically demonstrates that mail ballot elections significantly diminish voter turnout. During the week of March 7 to 13, 2020, more than 93% of manual ballots had a participation rate above 80% — only two out of thirty elections (6.7% of manual elections) resulted in lower rates. *See Wainfleet Co.*, No. 03-RC-256434 (63% rate); *Growing Seeds at Crystal Springs, Inc.*, No. 19-RC-256529 (75% rate). However, from March 14 to June 9, Acting Regional Directors exclusively ordered mail ballot elections and nearly 40% of elections had a participation rate of 80% or less.

During the pandemic, the reality of low-voter turnout in mail ballot elections has only worsened. Mail ballot elections have consistently resulted in less than 60% voter turnout. *See, e.g., Altec Industries, Inc.*, 10-RD-257071 (59%); *Paragon Sys., Inc.*, No. 09-RC-259023 (55%); *River*

Mkt. Comm. Co-op, No. 18-RC-256986 (54%); *Univ. Protection Serv., LLC*, No. 10-RC-257846 (52%); *Triple Canopy, Inc.*, No. 27-RC-257463 (37%); *Am. Sec’y Programs, Inc.*, No. 05-RC-256696 (36%); *Children & Adult Disability Ed. Servs.*, No. 04-RC-256028 (40%), *TMW Contracting, LLC*, 10-RC-261728 (44%). And numerous reports of service cutbacks and various problems with the US Postal Service portend even more uncertainties about the efficacy of a mail ballot election. Badger, Emily et. al, *Is the Mail Getting Slower? Our Tracker Says Yes*, THE NEW YORK TIMES, <https://www.nytimes.com/interactive/2020/09/14/upshot/is-the-mail-getting-slower-tracker.html?action=click&module=Top%20Stories&pgtype=Homepage> (Sept. 21, 2020). The perception of the unreliability of voting by mail is likely to affect many people who will either not participate in the vote, or, even if they do, may resist the legitimacy of the outcome of the vote. This will be highly disruptive to industrial relations and any collective bargaining at this factory.

Further, in *Fontanini Foods, LLC*, the Regional Director extended the mail ballot period ***twice*** because of low turnout. No. 13-RC-257636 (Reg’l Dir. June 29, 2020). In that case, the Region commingled the ballots and counted on June 17, 2020. However, after low turnout, the Regional Director extended the initial mail ballot period until July 1, 2020. The Regional Director then extended the period for a second time, until July 8, 2020, because only 227 of 401 (56.6%) mailed ballots had been returned as of June 29. Other issues also arose in that case, including: some employees had to pay to receive the Board package, missing ballots, duplicate ballots, and a few employees attempted to contact the Board but never heard back about ballot issues. Ultimately, the Region counted ballots and while it stated it received 227 ballots, the Region only counted 216. A manual election eliminates these concerns and best preserves the laboratory conditions for an election and the integrity of the voting process. Indeed, the Board has noted, “[m]ail ballot elections are more vulnerable to the destruction of laboratory conditions than are manual elections because of

the absence of direct Board supervision over employees' voting." *Thompson Roofing, Inc.*, 291 NLRB 743 at n.1 (1988).

B. The Acting Regional Director Improperly Dismissed the Extensive Safety Precautions GSF Will Provide at the Opelika Facility

The Acting Regional Director did no more than make passing reference to the significant protections GSF guaranteed to provide employees, observers, and the Board agent alike so all could participate in a safe election. At the pre-election hearing, GSF committed to complying with all safety protocols outlined in GC Memorandum 20-10. Moreover, GSF offered to exceed the protocol requirements by implementing additional safeguards. These safety measures include providing a erecting an outdoor tent for voters, limiting access to the voting area to maintain social distancing, marking floor surfaces to identify proper distancing measurements, providing dispensable voting tools and equipment, installing Plexiglas barriers to protect observers and the Board agent, providing hand sanitizers and wipes for all participants, and placing signage to communicate safety guidelines. As an alternative election site that incorporates all other safety precautions described above if weather prevented outside voting, GSF also offered at the pre-election hearing to have the election held in a large conference room with specialized ventilation along with all the same safety protocols detailed above. Following all the safety protocols in GC Memorandum 20-10, GSF is committed to providing an environment that will allow employees to participate in a manual ballot election while doing nothing to increase COVID-19 transmission risk. The Acting Regional Director lacked a safety-based reason to depart from the preferred manual ballot election process.

Considering these facts, the Decision fails to follow precedent or the guidance of GC Memorandum 20-10. There is always "risk" of harm in day to day activity – risk of accidents, risk

of transmission of another disease, etc. But there is no showing on the facts and circumstances of this case that there is a significant risk of harm to anyone.

C. The Decision Violates Board Election Jurisprudence and is Inapposite to GC Memorandum 20-10

The Board has discouraged automatic deference to mail ballot elections after initially pausing manual ballot elections as a result of the COVID-19 pandemic. On April 17, 2020, the Board announced that its reactivated election proceedings and stated, “Consistent with their traditional authority, Acting Regional Directors have discretion as to when, where and if an election can be conducted in accordance with NLRB precedent.” National Labor Relations Board, *COVID-19 Operational Status Update*, <https://www.nlrb.gov/news-outreach/news-story/covid-19-operational-status-update> (April 17, 2020).

Thereafter, multiple Regions successfully conducted manual elections subject to social distancing procedures. *See, e.g., Hearthside Food Solutions LLC*, Case No. 15-RC-258901 (May 20, 2020 election), *Watson Bowman Acme Corp.*, No. 03-RC-262231 (Aug. 19, 2020 election). There has been no report of any problems with any manual ballot election taking place to date, and there is no reason to believe a manual ballot election will be any different at the Opelika facility.

Further, the Board’s General Counsel has identified and explained protocols to conduct manual elections safely with the benefit of the latest health information. On July 6, 2020, the Board’s General Counsel, Peter B. Robb, released GC Memorandum 20-10 on “Suggested Manual Election Protocols.” GC Memorandum 20-10 outlines numerous protocols to ensure a safe manual ballot election. GSF committed to comply with all the procedures listed. It will implement every suggestion in GC Memorandum 20-10, and it will work with both the Region and the Petitioner regarding any additional concerns. Indeed, the Petitioner has never wavered in its preference for an in-person election. Simply put, the Acting Regional Director abused her discretion by rejecting

the parties' preference for a manual ballot given the extraordinary safety protocols GSF has and will implement to protect the safety of all concerned. The false presumption that a statistically insignificant number of positive tests in the surrounding county poses a risk is insufficient to support the instant Decision. There is no good reason that a manual ballot election cannot be done here.

D. The Board Should Issue an Immediate Stay of Mail Ballot Distribution

The Decision indicates that the Region will distribute mail ballots on December 14, 2020. To prevent potential voter confusion and irreparable injury to the election process, the Board should issue an immediate stay of mail ballots. *See Aspirus Keweenaw*, 370 NLRB No. 13 (Aug. 25, 2020), *Perdue Foods LLC*, 370 NLRB No. 20 (Sept. 9, 2020), *Airgas USA, LLC*, 16-RC-262896 (Sept. 24, 2020).

V. CONCLUSION

The Decision is not a true application of what the Board has long held fast to, that employee rights are best preserved by an in-person election absent "extraordinary circumstances." While the Acting Regional Director maintained some discretion to determine the manner of an election, her disregard of five of the six factors along with the daily presence of USDA agents does not justify the decision to choose an election method that depresses voter turnout and impairs employee free choice. The Board should immediately correct this error, grant this Request for Stay, stay the mail ballot election, and order a manual ballot election.

Respectfully submitted this 30th day of November, 2020.

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I hereby certify that on this 30th day of November, 2020, a copy of the foregoing document was served via electronic mail and/or by U.S. Mail, postage prepaid, as follows:

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Attachment A